

depositions ordered by the Court without unduly burdening the parties. *See* Ex. 1 (Defendants' Proposed Order) at ¶¶ I.B (six depositions per week); IV.D (referring to "double-tracking" as opposed to "multi-tracking").

3. On October 11, 2018, Plaintiffs' counsel responded to Defendants, providing suggested edits to the revised Protocol. *See* Ex. 3 (10/11/18 Letter from P. Wedgworth and D. Ho to A. Gulley and B. Miller).

4. Later that day, Defendants responded to Plaintiffs' letter and proposed edits to the revised Protocol. *See* Ex. 4 (10/11/18 Letter from A. Gulley and B. Miller to P. Wedgworth and D. Ho). Defendants accepted all but two of Plaintiffs' proposed changes—the elimination on the limit of six depositions per week and substitution of a requirement that the parties accede to possible triple-tracking of depositions—as both provisions were specifically addressed and rejected by this Court during the October 5 status conference (a fact Defendants noted in their response). *Id.*

5. Plaintiffs responded by again eliminating any limit on the number of depositions in any given week and reinserting a requirement that the parties engage in "multi-tracking" of depositions (specifically striking the reference to only "double-tracking" where appropriate). *See* Ex. 5 (10/12/18 Letter from P. Wedgworth and D. Ho to A. Gulley and B. Miller).

6. Defendants rejected those changes a second time and informed Plaintiffs' counsel that they would be submitting the revised Protocol as sent to Plaintiffs on October 11, 2018. *See* Ex. 6 (10/15/18 Letter from A. Gulley and B. Miller to P. Wedgworth and D. Ho).

7. The two issues in dispute—the limit on the number of depositions that can occur each week and the lack of need for anything more than occasional double-tracking of depositions to accommodate party and third-parties' schedules—was directly addressed by the Court:

“I think as a baseline, defendants’ proposal of four party depositions a week and two third-party deposition a week by each side, so that’s six depositions a week, that’s not a bad default, with no party to be deposed in more than one dep per day.

I think that where necessary, depositions can be double tracked, either by agreement of the parties or with a motion to me. I hope I don’t get motions on this. There’s no reason that unrelated depositions can’t be double-tracked during this period.”

Ex. 7 (10/5/18 Transcript of Proceedings (“Tr.”)) at 57:17-58:1. *See also id.* at 21:1-4 (“I know what double- and triple-tracking depositions looks like. And if it has to be done, it has to be done. I’m just not sure it has to be done in this case right now.”); *id.* at 48:4-5 (“[I]f double-tracking depositions is necessary, I’m good with that.”); *id.* at 69:11-12 (“To me, you could take 90 depositions in six months, some of them double-tracked, some of them half days.”).

8. Defendants believe that it is necessary to include a default limit on the number of depositions per week (6) and limit permissible “multi-tracking” to “double-tracking” in the deposition protocol so that there is no ambiguity at the outset of deposition discovery and the parties’ are not unnecessarily bringing motions to the Court to address these issues later on. Defendants’ version of the revised Protocol makes clear that both provisions—the limit on the number per week and the number per day—may be altered by “a specific agreement among the parties or Court order” or during the meet-and-confer process. *See* Ex. 1 at ¶¶ I.B, IV.D. Those protections should be sufficient to address Plaintiffs’ concerns.

WHEREFORE, Defendants respectfully request that the Court enter Defendants’ revised Deposition Protocol (Ex. 1, hereto).

Dated: October 15, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Aundrea K. Gulley, an attorney, hereby certify that on October 15, 2018, I caused a true and correct copy of the foregoing **DEFENDANTS' SUBMISSION OF REVISED DEPOSITION PROTOCOL ORDER**, to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Aundrea K. Gulley

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